IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC. APP. No.686/2007 & CM No.16519/2007

Judgment delivered on: December 04 ,2007

National Insurance Co. Ltd. ..... Appellant.
Through: Mr.Pradeep Gaur, Advocate.

versus

Vivek Mishra & Ors. ..... Respondents

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

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By way of this appeal, the appellant seeks to challenge the award dated 11.2.2004 as well as an order dated 30.5.2007 passed by the Tribunal, dismissing the application of the appellant moved under Section 169/157 of the Motor Vehicles Act. There is

a delay of 1273 days in filing the present appeal. For condoning the delay, the contention of counsel for the appellant is that the delay in filing the appeal has taken place primarily due to the time consumed in prosecution of the application moved by the appellant under Section 169 read with Sections 157, 174 and 175 of the Motor Vehicles Act in the execution petition filed by the appellant seeking recovery of the award amount from respondent Nos.4 and 5. Counsel for the appellant has thus sought to urge that since respondent No.2 became owner of the offending vehicle after purchase of the same, therefore, by fiction of law, the liability to satisfy the award amount also rested on the respondent No.2. Counsel thus contends that there is an apparent illegality in the award as the Tribunal has not given the recovery rights to recover the award amount from the owner of the offending vehicle.

Counsel for the appellant has also invited my attention to Para 16 of the award in which the Tribunal has held the insurance company liable to pay the compensation amount on behalf of respondent No.2 as well besides the other respondent Nos.1, 4 and 5. The contention of counsel for the appellant is that only in the operative para of the impugned award, the recovery

rights to the appellant has not been given to recover the award amount from respondent No.2 and the same has been restricted only against respondent Nos.4 and 5.

I have heard learned counsel for the appellant at considerable length.

The impugned award in the present case was passed as long back as on 11.02.2004 and after passing of the award, the appellant took its remedy of seeking recovery of the award amount against respondent Nos.4 and 5. In the said execution application, the appellant has separately moved an application under Section 169 read with Sections 157, 174 and 175 to recover the award amount against respondent No.2 as well. The said application of the appellant was dismissed by the Tribunal vide order dated 30.5.2007. I do not find any infirmity in order dated 30.5.2007 as the Tribunal has rightly held that the executing Court cannot go behind the award to permit the appellant to execute the award against respondent No.2 against whom the directions for recovery were not given to the appellant. The appellant is seeking condonation of delay in preferring the present appeal on the ground that the appellant was bonafidely prosecuting its remedy to seek enforcement of recovery against

respondent No.2 by way of filing the said application. Even if such a plea of the appellant is accepted, still the appellant has failed to prefer the appeal within the statutory period of limitation prescribed under Section 173 of the Motor Vehicles Act, i.e. within a period of 90 days. In Para 5 of the application seeking condonation of delay the appellant itself has admitted that the panel counsel had submitted his legal opinion on 26.7.2007 advising the appellant to prefer an appeal against the impugned award dated 11.2.2004. There is no explanation given by the appellant in not filing the appeal even after submission of the said legal opinion dated 26.7.2007. It has only been stated that thereafter the file was sent to the present counsel to file an appeal and accordingly the same has been filed claiming condonation of delay in the same. No explanation much less any sufficient explanation has been given in the application as to why even after submission of the legal opinion dated 26.7.2007, the appeal could not be filed by the appellant till 3.11.2007. The original award in the present case was passed on 11.2.2004 and the application of the appellant moved under Section 169 read with Sections 157, 174 and 175 of the M.V. Act was dismissed vide order dated 30.5.2007. Certified copy of the said order was

applied on 6.6.2007 and the same was made available to counsel for the appellant on 13.7.2007. The legal opinion was submitted by counsel for the appellant on 26.7.2007. It is thus manifest that the appellant has been totally careless in not filing the present appeal even within 90 days period as mandated under Section 173 of the Motor Vehicles Act even if the same is counted from the date of submission of the legal opinion dated 26.7.2007. There is thus, apparent delay on the part of the appellant in filing the present appeal.

I do not find any merit in the application seeking condonation of delay in filing the present appeal after such a long and unexplained delay.

Since the application moved by the appellant under Section 169 read with Sections 157, 174 and 175 of the Motor Vehicles Act has been dismissed, therefore, the present appeal filed by the appellant cannot be entertained.

The same is accordingly dismissed.

KAILASH GAMBHIR, J.

December 04, 2007
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